

Panaji, 21st February, 2008 (Phalguna 2, 1929)

SERIES II No. 47



# OFFICIAL GAZETTE

## GOVERNMENT OF GOA

### SUPPLEMENT

#### GOVERNMENT OF GOA

Department of Labour

#### Notification

No. 28/18/2007-LAB/864

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 24-7-2007 in reference No. IT/45/99 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

*Hanumant T. Toraskar*, Under Secretary (Labour).

Porvorim, 22nd August, 2007.

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR  
COURT-I AT PANAJI

(Before Dilip K. Gaikwad, Presiding Officer)

Case No. IT/45/99

Sanjeev N. Sawant,  
C/o Purushottam R. Sawant,  
Bardez, Goa.

... Workman/Party I

V/s

M/s. Whispering Palms  
Beach Resort,  
Candolim Beach, Candolim,  
Bardez, Goa.

... Employer/Party II

Workman/Party I - Represented by representative V. Sawant.

Employer/Party II - Represented by Adv. A. Kundaikar.

#### AWARD

(Passed on this 24th day of July, 2007)

This is a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 (hereinafter in short referred to as the said Act, 1947).

1. Facts giving rise to the present reference, stated in brief, are as follows:

The Government of Goa in exercise of powers conferred on it by Section 10(1)(d) of the said Act, 1947, under order dated 12-4-1999 has referred to this Tribunal following dispute for adjudication—

"(1) Whether the action of the management of M/s. Whispering Palms Beach Resort, Candolim Bardez, Goa, in terminating the services of Shri Sanjeev N. Sawant, Carpentry in-charge w.e.f. 18-2-1997, is legal and justified ?

(2) If not, to what relief the workman is entitled ?"

2. Pursuant to notices, both parties put their appearance in this Tribunal. The Party I presented his claim statement on 15-7-1999 at Exb. 3. It appears from claim statement that the Party I was appointed as Carpenter/Painter by the Party II w.e.f. 1-4-1992 under its letter dated 27-3-1992. His salary was revised by the Party II under its letter dated 21-12-1996. The Party II promoted the Party I as Carpentry Works in-charge by its letter dated 1-1-1997. Even though the Party I was promoted as Carpentry Works in-charge he was doing the same work which he was doing as Carpenter/Painter. He was given promotion by the Party II only with malafide intention to remove him from service. The Party II terminated his service under its letter dated 18-2-1997 by giving reason that the Party II lost confidence in him. Termination of his service is punitive in nature and same is without holding fair and proper inquiry and in violation of principles of natural justice. By sending reply on 28-2-1997 to the Party II, he denied all charges levelled against him. He sent copy of

reply to the Asstt. Labour Commissioner, Mapusa for intervention and for reinstatement in the service. The Party II by giving reply informed the Asstt. Labour Commissioner that his demand of reinstatement cannot be considered. Conciliation proceeding held by Asstt. Labour Commissioner ended in failure. Therefore, the Government of Goa under its order dated 12-4-1999 has referred the dispute to this Industrial Tribunal for adjudication as stated earlier.

3. The Party I is claiming to be a workman as defined by Section 2(s) of the said Act, 1947 and that the Party II has violated provisions contained in the Goa, Daman and Diu Shops and Establishments Act, 1973 and the Rules framed thereunder. He has prayed for setting aside termination order issued by the Party II and for direction to the Party II to reinstate him in the service with full back wages and with continuity of service.

4. The Party II filed its written statement on 2-9-1999 at Exb. 4 and thereby combated the claim made out by the Party I. The Party II has admitted that the Party I was appointed as Carpenter w.e.f. 2-4-1993, subject to terms and conditions set out in the appointment letter. The Party I was confirmed in the service w.e.f. 3-10-1993. Salary of the Party I was revised on 1-9-1993, 1-1-1994, 1-4-1994, 1-8-1994 and 1-4-1995. He was promoted to the post of Senior Carpenter w.e.f. 1-5-1995 and then to the post of Carpenter Works in-charge w.e.f. 1-5-1996. Since after promotion as Carpentry Works in-charge the Party I was in grade II category which is of supervisors. On 1-2-1997 at about 4.00 p.m. one S.C. Parida who was General Manager (Administration and Finance) was taking round in maintenance department of the hotel. The Party I by hiding himself threw iron material of half kilo gms. in weight towards the General Manager who in turn informed about the incident to management of the Party II. The management gave warning to the Party I not to commit such act in future. Again on 8-2-1997 at about 9.30 p.m. the Party I went to and threw bottles filled with soda water on residence of the General Manager, Parida. The Party I was arrested by the Police in connection with this incident. The Party I is involved in serious type of misconduct which could cause damage to hotel property. Therefore, the Party II terminated service of the Party I with immediate effect as per clause 15 contained in appointment letter dated 17-7-1993. The Party II has paid to the Party I amount of Rs. 9,854/- against one month's notice, arrears of salary and salary for the month of February, 1997. The Party I is not entitled for reinstatement in the service with back wages.

5. The Party I submitted his rejoinder on 24-9-1999 at Exb. 5. He denied all contentions which are raised by the Party II in its written statement and which are adverse to his interest. It is needless to reproduce the denials.

6. The Party II amended his written statement on 15-9-2000 and raised a plea that the post of Carpentry Works in-charge is the supervisory post of Grade-II

category. Therefore, the Party I is not a workman as defined under Section 2(s) of the said Act, 1947 and as such the reference is bad and not maintainable.

7. The Party I filed his additional rejoinder on 3-10-2000 at Exb. 4. He reiterated that he is workman as defined under Section 2(s) of the said Act, 1947. He asserted that the reference is maintainable.

8. On basis of pleadings the then learned Presiding Officer framed issues at Exb. 6 and additional issue at Exb. 15. The issues are recast by me on 18-7-2007. Same are at Exb. 20. The parties did not lead evidence after recasting of the issues. The recast issues are as follows:

1. Whether the Party I was a workman as defined under Section 2(s) of the Industrial Disputes Act, 1947 at the time of termination of his service ?
2. Whether termination of service of the Party I by the Party II w.e.f. 18-2-1997 is illegal and justified?
3. Whether the Party I is entitled to the reliefs as prayed for ?
4. What award ?

9. My findings on the above issues are as follows:

- Issue No. 1: In affirmative.  
Issue No. 2: In negative.  
Issue No. 3: Entitled to back wages only.  
Issue No. 4: As per final order.

#### REASONS

10. *Issue No. 1:* The Party II is a three star hotel which is providing services mainly to foreign tourist. The Party I was appointed as Carpenter/Painter by the Party II under its letter dated 23-7-1992 w.e.f. 1-4-1992. The appointment letter is at Exb. W-3. Salary of the Party I was revised by the Party II under its letter dated 21-12-1996 w.e.f. 1-4-1996. Xerox copy of the letter dated 21-12-1996 is at Exb. W-1. The Party I was given promotion as Carpentry Works in-charge by the Party II under its letter dated 1-1-1997 w.e.f. 1-5-1996. Xerox copy of the promotion letter is at Exb. W-2.

11. The Party I examined himself at Exb. 9. According to him, as a Carpenter/Painter he was required to do work of cutting, fixing wooden frames and of preparing and polishing doors, windows and mirrors etc. Even after promotion as Carpentry Works in-charge he was doing the same work.

12. The Party II examined its Personal Manager, I. N. Siddiqui at Exb. 17. He pointed out that the post of Carpentry Works in-charge is of Grade-II category and it is supervisory in nature. There were three persons who were working as helpers under supervision of the Party I.

13. In support of its case the Party II further examined the then General Manager, S. C. Parida at Exb. 19. His evidence is mainly on the incidence dated 1-2-1997 and

dated 8-2-1997. Evidence of this witness is not material at this stage.

14. The representative appearing on behalf of the Party I argued that if nature of the work which the Party I was doing as Carpentry/Painter and even after promotion as Carpentry Works in-charge is taken into consideration, it becomes crystal clear that the Party I was employed in industry of the Party II to do manual, unskilled, skilled and technical work for hire or reward. There is no evidence on behalf of the Party II to hold that the post of Carpentry Works in-charge is the supervisory work. Therefore, according to him, the Party I is a workman within the meaning of Section 2(s) of the said Act, 1947.

15. Learned advocate of the Party II assailed argument advanced by the representative, on the grounds that the post of Carpentry Works in-charge is of Grade-II category and it is the supervisory post. The Party I was drawing salary Rs. 2,265/- per month which is certainly more than Rs. 1,600/- per month. Therefore, according to him, the Party I is not a workman within meaning of Section 2(s) of the said Act, 1947. In support of his argument he relied upon xerox copy of chart showing grade and scale produced at Exb. W-10.

16. Section 2(s) of the said Act, 1947 defines as follows:

*“workman means any person including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act, in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person,—*

- “(i) who is subject to Airforce Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or*
- (ii) who is employed in the Police Service or as an officer or other employee of a prison; or*
- (iii) who is employed mainly in a managerial or administrative capacity; or*
- (iv) who being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of managerial nature”.*

17. Nature of the work which the Party I was doing as a Carpenter/Painter and even after promotion as

Carpentry Works in-charge pointed out by him in his evidence itself goes to show that he was employed in industry of the Party II to do manual, unskilled, skilled and technical work for hire or reward. His service is terminated by the Party II when he was on the post of Carpentry Works in-charge. Therefore, the salary which he was getting at the time of termination of his service will have to be taken into consideration. He admitted in para No. 2 of his examination in chief that he was getting gross salary Rs. 2,625/- per month w.e.f. 1-4-1996 which is more than one thousand six hundred rupees prescribed under Section 2(s) (iv) of the said Act, 1947. If it is proved that he was employed in a supervisory capacity then in that case he will not be covered by definition of “workman” provided under Section 2(s) of the said Act, 1947.

18. Xerox copy of promotion letter produced at Exb. W-2 speaks that management of the Party II pleased to promote the Party I as Carpentry Works in-charge w.e.f. 1-5-1996, that the said promotional post is of Grade II category and it is in the scale of Rs. 650-44-870-60-1,190-84-1,610-104-2,130. On basis of this letter it can safely be said that the post to which the Party I was promoted was of Grade II category. This letter does not even by way of inference show that the post to which the Party I was promoted was the supervisory post. Xerox copy of the extract showing grade and scale produce at W-10 discloses that the scale prescribed for the grade II category is applicable to Senior Captain, Assistant Accountant, F & B Control Supervisor, Commi-I, Maintenance Supervisor, Assistant House Keeper and Shift Supervisor. The post of Carpentry Works in-charge is not included in any of the classes of designation shown against the pay scales prescribed for Grade II category in the extract of which xerox copy is produced at Exb. W-10. Though the Party I was drawing salary exceeding Rs. 1,600/- per month, there is no sufficient and convincing evidence on behalf of the Party II to hold that the Party I was appointed in a supervisory category. It is very difficult to be in agreement with argument advanced by learned advocate of the Party II. The provision contained in section 2(s) (iv) of the said Act, 1947 will not be applicable to the Party I. Resultant position is that he will have to be treated as a workman within meaning of Section 2(s) of the said Act, 1947. I, therefore, answer the issue in affirmative.

19. Issue No. 2: It has come in evidence of witness Siddiqui examined on behalf of the Party II that on 1-2-1997 the then General Manager, Parida took a round in maintenance section of the hotel. By that time the Party I by hiding himself behind shed threw iron material on the General Manager. It was at about 4.00 p.m. The General Manager reported incident to management of the Party II who in turn gave warning to the Party I. Again on 8-2-1997 the Party I went along with two other workers of the Party II to and threw soda water bottles on residence of the General Manager, Parida. This incident was also reported by the General Manager to management of the Party II. The

General Manager lodged FIR to the Police. Therefore, management of the Party II decided and accordingly terminated service of the Party I under its letter dated 18-2-1997 with immediate effect.

20. Evidence of the witness Siddiqui is supported by the witness S. C. Parida and who was the then General Manager.

21. Reference of the misdeeds committed by the Party I and which are disclosed by witnesses examined on behalf of the Party II is also in the termination letter dated 18-2-1997. In short, the Party II terminated service of the Party I on the ground of misconduct of the Party I. It is admitted fact that the Party II is registered under the Goa, Daman and Diu Shops and Establishments Act, 1973 and the Rules, 1975 framed thereunder. Section 61(1)(a) of the said Act, 1973 makes it clear that provisions contained in this Act shall not apply to employees in any establishment whose average monthly wages exceed two thousand five hundred rupees. The Party I at the time of his termination of service was getting salary more than rupees two thousand five hundred per month. I therefore, hold that the Party I is not entitled to raise plea, that the Party II terminated his service in violation of provisions contained in the said Act, 1973 and in the said Rules, 1975.

22. The Party I is proved to be workman as defined under Section 2(s) of the said Act, 1947. The Party II is employer. Dispute raised by the Party I is in respect of his employment or non-employment. It follows that there is industrial dispute between the parties as defined by Section 2(k) of the said Act, 1947. Therefore, and since the provisions contained in the said Act, 1973 and in the said Rules, 1975 are not applicable to the Party I, I hold that the Party I is entitled to take recourse of provisions contained in the said Act, 1947.

23. The Party II terminated service of the Party I on the ground of misconduct. It was necessary for the Party II to hold inquiry on the charge of misconduct against the Party I. Nothing such has been done by the Party II. It follows that the Party II has terminated service of the Party I without holding inquiry into the charge levelled against him. I, therefore, hold that, termination of service by the Party II is not legal and justified.

24. Termination of service of the Party I by the Party II amounts to retrenchment as provided under Section 2(oo) of the said Act, 1947. Section 25F of the said Act, 1947 lays down conditions which are precedent to retrenchment of workman. This section is as follows:

*"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until —*

- (a) *the workman has been given one month's notice indicating the reasons for retrenchment and the period of notice has expired, or the*

*workman has been paid in lieu of such notice, wages for the period of the notice;*

- (b) *the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and*
- (c) *notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."*

25. It appears from para No. 6 of written statement (Exb. 4) that the Party II has paid Rs. 9,854/- against one month's notice, salary arrears and salary for the month of February, 1997 to the Party I under pay order dated 21-2-1997. The Party II did not comply with provisions contained in Section 25F(b) and (c) of the said Act, 1947. This is one more ground on which it will have to be held that, termination of service of the Party I by the Party II is not legal and justified. My answer to the issue is in negative.

26. *Issue No. 3:* If the Labour Court, Tribunal or National Tribunal as the case may be is satisfied that the order of discharge or dismissal was not justified, it may by its award set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions if any, as it thinks fit or gives such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require, as provided under Section 11A of the said Act, 1947.

27. Learned advocate of the Party II argued that the claim statement is not signed by the workman, Sanjeev Sawant, but by the representative, V. Sawant. Therefore, the workman is not entitled to the reliefs as claimed. It is true that the claim statement is signed by the representative. It is verified by the workman. Letter of authority produced along with the claim statement makes it clear that the workman has given authority to the representative, to argue, to plead, to make submission, to give reply and to file rejoinders on his behalf in this proceeding. I therefore, do not accept submission made by learned advocate of the Party II.

28. The representative of the Party I submitted that, termination of the service of the Party I by the Party II is illegal and unjustified. Therefore, according to him, the Party I is entitled to reinstatement in the service with full back wages with consequential benefits. As against this, according to learned advocate of the Party II, if nature of the misdeeds committed by the Party I is taken into consideration, it will not be proper and correct to grant the relief's claimed by the Party I.

29. The Party II has produced letter issued by the Police Inspector of Calangute Police Station at Exb. E-9.

The letter is dated 28-1-2002. The Police Inspector by this letter has informed the Personal Manager of the Party II that, Sanjeev Sawant, that is, the Party I was arrested in Calangute Police Station Crime No. 48/98 for offence punishable under Sections 143, 147, 324, 307, 504, 506, 427, 120-B read with Section 149 of Indian Penal Code. If evidence of the witnesses examined by the Party II is taken into consideration along with the letter issued by the Police Inspector, evidence led by the Party II about the misdeeds alleged to have been committed by the Party I, appears to be probable and convincing.

30. Generally, reinstatement is not granted where the workman has indulged in activities highly prejudicial to the company or there is loss of confidence in the workman. The Tribunal can refuse to order reinstatement where reinstatement is not fair and proper. If the case presents certain unusual and exceptional features so as to make reinstatement inexpedient or improper to meet the ends of justice the Tribunal has discretion to award adequate monetary compensation instead of reinstatement. In the present case, considering conduct of the Party I, I hold that it will not be expedient or proper to reinstate Party I in the service of the Party II which has lost confidence in him. To award adequate monetary compensation would be the proper remedy instead of setting aside termination of service of the Party I and of his reinstatement in the service. I hold that if the Party II is directed to pay to the Party I only the back wages for the period from the date of termination of his service till the date, that will meet ends of justice. I, therefore, hold that, he is entitled to the back wages only, for the said period.

As a result of above discussion and findings given as to the issue Nos. 2 and 3, I proceed to adjudicate the dispute by passing order as follows:-

#### ORDER

1. The action of the management of M/s. Whispering Palms Beach Resort, Candolim, Bardez, Goa in terminating the services of Shri Sanjeev N. Sawant, Carpentry in-charge w.e.f. 18-2-1997 is not legal and justified.
2. Termination of service of the Party I by Party II is set aside.
3. The Party I is entitled only to back wages for the period from the date of termination of his service till the date, that is, 24-7-2007.
4. The Party II do pay to the Party I full back wages for the period from the date of termination of service of the Party I till the date, that is 24-7-2007.
5. Relief claimed by the Party I for his reinstatement in the service rejected.
6. No order as to costs.

7. Award be submitted to the Government of Goa as per provision contained in Section 15 of the Industrial Disputes Act, 1947.

Sd/-  
(Dilip K. Gaikwad),  
Presiding Officer,  
Industrial Tribunal-cum-  
-Labour Court-I.

#### Notification

No. 28/18/2007-LAB/921

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa, on 3-8-2007 in reference No. IT/74/1992 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).

Porvorim, 23rd August, 2007.

#### IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I AT PANAJI

(Before Dilip K. Gaikwad, Presiding Officer)

Case No. IT/74/92

Shri Naguesh Priolkar,  
C/o Dinanath R. S. Priolkar,  
Shantinagar, Santa Cruz Road,  
Ponda, Goa.

... Workman/Party I

V/s

The Manager (Personnel & Administrative),  
M/s. E. Merck (India) Limited, Plot No. 11/1,  
Marwasodo, Usgao,  
Ponda, Goa.

... Employer/Party II

Workman/Party I is represented by Representative K. V. Nadkarni.

Employer/Party II is represented by Adv. G. K. Sardessai.

#### AWARD

(Passed on this 3rd day of August, 2007)

This is a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 (hereinafter in short referred to as the said Act, 1947).

1. Facts of the present reference, stated in brief, is as follows:

The Government of Goa in exercise of powers conferred on it by Section 10(1)(d) of the said Act, 1947, under Order dated 27-11-1992 has referred to this Industrial Tribunal following dispute for adjudication.

- (i) Whether Shri Naguesh Priolkar, Supervisor, Grade-I of the management of M/s. E-Merck (India) Ltd., Usgao, Ponda-Goa, is a workman under Sec. 2(s) of the Industrial Disputes Act, 1947 (Central Act 14 of 1947)?
- (ii) If so, whether the action of the management of M/s. E-Merck (India) Ltd., Usgao, Ponda in terminating the services to Shri Naguesh Priolkar, Production Supervisor, w.e.f. 8-7-92, is legal and justified ?
- (iii) If the answer to (2) above is negative to what relief the workman is entitled to ?

2. In response to notices, both parties put their appearance in this Industrial Tribunal. The Party I presented his claim statement on 21-12-1992 at Exb. 4. It appears from claim statement that he was appointed as Trainee Junior Production on consolidated salary of Rs. 950/- p.m. in factory of the Party II w.e.f. 15-12-1982. He was confirmed in service by the Party II under its letter dated 6-12-1982. The Party II promoted the Party I to the post of Supervisory Grade-I w.e.f. 1-6-91 by its letter dated 4-7-1991. Service of the Party I was governed by contract of service and the service rules which were applicable to all employees of the Party II. Certified Standing Orders which are framed under the Industrial Employment Standing Orders Act, 1946, and which are approved by Certifying Officer on 3-4-1984 are made applicable to all workmen employed in establishment of the Party II doing manual, technical and supervisory work. Same was the position under Service Rules which were applicable to all employees of the Party II before implementation of Certified Standing Orders. Though the Party I was appointed to the post of Supervisory Grade-I, he was doing the same duties which he was doing before his promotion. His job in the post of Supervisory Grade-I was neither independent nor it was administrative or managerial in nature. He has no powers to sanction leave to any of the employees, to make any financial commitments and to take any administrative decision on behalf of the Party II. His entire service career is unblemished. To his surprise, he received letter dated 8-7-1992 whereunder the Party II informed him that his service is being terminated with immediate effect in terms of appointment letter dated 6-12-82. The Party II neither served the charge-sheet nor held departmental inquiry against him. He is not given opportunity. Termination of his service is illegal, unjust and without following principles of natural justice. He addressed a letter dated 14-7-1992 to Director and Secretary of the Party II and requested them for revocation of the termination order and to allow him to join his duties with immediate effect. The Party II did not give response to his request letter. Therefore, he raised dispute before the Labour Commissioner. In spite of giving sufficient opportunities, the Party II did not file its written statement in the conciliation proceedings. There was no proper and fruitful response on behalf of the Party II for reconciliation as a result the Labour Commissioner recorded failure of the conciliation proceedings. Thereafter, the Government of Goa has

referred to this Industrial Tribunal the dispute for adjudication as stated earlier.

3. The Party I by presenting the claim statement has prayed for holding that the action of management of the Party II in terminating of his service is illegal, unjustified and bad in law, and for direction to the Party II to reinstate him in service w.e.f. 8-7-1992 with full back wages and with continuity of service.

4. The Party I amended that claim statement and explained the duties which he was doing as Junior Production Assistant and also as Supervisor Grade-I. According to him, his duties as Junior Production Assistant were operational in nature in the process of production of Vitamin-E in factory of the Party II. Such duty was part of entire process of production, right from loading/charging of raw materials in the factory. He himself was carrying out the entire process of manufacturing Vitamin-E including that of reaction by heating process, chilling process, observation and maintenance of levels, temperature, quality and recording developments every half an hour. He was recording consumption of reactions in the process of productions till the final products come out of the plant. He was doing the same duties even after his promotion to the post of Supervisory Grade-I in Vitamin-E Plant and also after he was transferred to Guaizulene Plant of the Party II. He was following process of production as detailed, and was carrying out necessary entries in proformas supplied by the Party II when he was working in Guaizulene Plant.

5. The Party II resisted the claim statement by filing its written statement on 25-1-1993 at Exb. 6. The Party II admitted that the Party I was appointed as a Trainee Junior Production Assistant in its factory at Usgao w.e.f. 15-12-1982, and that the Party I was confirmed in the service w.e.f. 2-1-1984. Further, it appears from written statement that the Party I was promoted to Skilled Grade-I w.e.f. 1-1-1990 and to Grade-I in management cadre of the Party II under its letter dated 4-7-1991. Promotions of the Party I were followed by revision in pay structures. Appointment and promotions of the Party I were governed by conditions and Service Rules related to non-management cadre and subsequently, by Certified Standing Orders. The Party I after his promotion to the Supervisory Grade ceased to be a workman as defined under the Industrial Employment Standing Orders Act, 1946, by virtue of his salary which was of more than Rs. 1,600/- p.m. as well as nature of his duties. The Party I is not a workman as defined under Sec. 2(s) of the said Act, 1947. Therefore, the reference is not maintainable. The Party II received reports which disclosed that the Party I was involved in such acts which were sabotaging cordial relations between management and its workmen as well as employees from the Supervisory Cadre. The Party I was instigating workmen and non-workmen against its management with a view to refrain from discharging their normal functions. On 4-7-1992, at about 7.50 a.m. due to instigation by the Party I and by an employee Austin Fernandes, management staff of the Supervisory Cadre held demonstration of protest outside the gate of

the factory against termination of service of the said Fernandes and of one more employee. The Party I by his own conduct compelled the Party II to come to conclusion that it would be against interest of discipline and smooth functioning of the factory to retain the Party I in its organization. The Party II lost confidence in the Party I. Therefore, the Party II by its letter dated 8-7-1992 in exercise of powers under appointment letter terminated services of the Party I without assigning any reasons. The termination is simplicitor and without attaching stigma. It is not of punitive nature. There was no necessity to issue charge-sheet or to hold inquiry against the Party I. Termination of service of Party I is legal and justified. The Party II was not given sufficient opportunity to place its case before the Labour Commissioner. There was no sufficient material before the Labour Commissioner to refer the dispute. Therefore, the Party II has entreated for rejection of the reference.

6. The Party I filed its Rejoinder on 1-3-1993 at Exb. 7, which runs into eleven typed pages. All the contentions which are raised by the Party II in its written statement and which are adverse to his interest are denied by him in seriatim. It is needless to reproduce the denials. In addition to the denials, he strictly adhered to his claim which is made out in the claim statement. He is claiming that he is a workman as defined under the said Act, 1947, and that he is entitled to the benefits as claimed.

7. On basis of pleadings, the then learned Presiding Officer framed issues on 7-4-1993 at Exb. 8. The issues are as follows:

- 1) Does Party No. 1, Shri Mr. Naguesh Priolkar prove that he is a workman as defined in Section 2(s) of the Industrial Disputes Act ?
- 2) If yes, does he prove that the action of the management of Party No. II in terminating his services w.e.f. 8-7-92 is not legal and just ?
- 3) If yes, is Party No. 1 entitled to any relief ?
- 4) What Award and order ?

8. The then learned Presiding Officer who has framed the above issues treated the Issue No. 1 as preliminary issue. Accordingly, both the parties have led evidence on issue No. 1. Therefore, I am going to record my finding only on issue No. 1 which is the preliminary issue, as follows:-

Issue No. 1: In the negative.

#### REASONS

Before proceeding further it is necessary to make it clear that if answer to the Preliminary issues is in negative, in that case, questions as to whether the action of management of Party II in terminating his service is legal and justified and as to whether he is entitled to any relief will not survive and as such entire reference will have to be disposed off by passing Award.

9. Issue No. 1: The Party I was appointed as a Trainee Junior Production Assistant in establishment of Party II

under letter dated 6-12-1982. The appointment letter dated 6-12-1982 is produced at Exb. W-1. The Party II issued separate letter containing terms and conditions of his service on the very day that is on 6-12-1982. This letter is at Exb. W-2. He was promoted to the post of Supervisory Grade w.e.f. 1-6-1991 by the Party II under its letter dated 4-7-1991. The promotion letter is at Exb. W-4.

10. The Party I examined himself at Exb. 19. It appears from his evidence that as a Junior Production Assistant he was working as Trimethyl Hydroquilome Section and also in Vitamin E Section of the Party II. When he was in Trimethyl Hydroquilome Section he was doing work of charging raw material either from the tank yard or store premises into reactor mutually or by dumping under vacuum. He was controlling reaction with temperature by circulation of chilled and processed water and by maintaining parameters of pressure for vacuum and flow of reactants. After the reaction was over its mixture was allowed to settle for about half an hour. He was separating the two layers, organic and aqueous. He was carrying out reaction in the form of sulphonation, oxidization, reduction, centrifusion of the product and then of drying it in rotary dryer under vacuum.

11. Further it appears from evidence of the Party I that when he was working in Vitamin-E Section of the Party II, he was doing work of distillation of Vitamin-E in short path distillation unit to get 88% to 90% of main fraction of Vitamin E and 5% to 6% Forerun and residue. He was actually working on the shop floor which is area of production. He was required to fill in the forms and proforma of the products. The proformas bearing his signatures are produced by him at Exb. W-9, colly. He was required to fill in Short Path Distillation Record Form after every half an hour. The proformas of Short Path Distillation Record Form are produced at Exb. W-10. These forms are filled in by him prior to his promotion to the post of Supervisory Grade. Xerox copies of Short Path Distillation Forms are produced by him at Exb. W-11, colly. He has noted reading of temperature vacuum, pump feed setting and of mixture setting.

12. The Party I as pointed out by him in his evidence was transferred to Guaizulune Plant which is also establishment of the Party II. When he was working in this Plant he was required to requisition raw material from store and which was required for production. He was doing work of requisitioning the raw materials from store as per instruction of Production Executive. Xerox copies of requisition slips pertaining to the period from 27-10-1991 to 13-6-1992 are produced by him at Exb. W-19, colly. He was monitoring entire production process from time to time. He was taking samples of the products at different stages of the production. He was filling in quality control test request slips and was sending sample to the quality control department for analysis. He has produced xerox copies of quality control tests request slips for pertaining to period from 22-11-1991 to 9-6-1992 at Exb. W-20, colly. He was writing daily shift report including

progress of production, power failure if any, breakdown of the machinery, if any and instructions from production Executive in relation to the production process. Xerox copies of the said reports for the period from 2-10-1991 to 8-7-1992 are produced by him at Exb. W-22 colly.

13. Evidence of the Party I further shows that when he came to be promoted to the post of supervisory grade his duties were not specified. He was not performing managerial or administrative function. He was never given Power of Attorney by the Party II. He was not exercising powers of appointments and of taking disciplinary actions against employees. He was not authorized to make any financial commitment on behalf of the Party II. Even after his promotion to the post of Supervisory Grade he was doing the same duties which he was doing before the promotion to the post of Supervisory Grade.

14. The Party I in support of his case examined a witness V. Y. Rane at Exb. 23. This witness is working as a Plant Operator in establishment of the Party II. He was working in Guaizulune Plant of the Party II in the year 1991, 1992. This plant was working in three shifts. There are four stages of the production. Employees of plant operators and production assistants grade were working up to stage three, while only the supervisors were working in the stage four where final products comes out. The supervisors were doing work of supervision over the work done by him and by other workmen, of forwarding leave applications to superior authority and of informing the workmen as to whether their leave is sanctioned. He further pointed out that the Party I was working in the fourth stage of the production.

15. The Party II examined its Assistant Production Manager, B. Gaonkar at Exb. 23-A. Initially, he was appointed by the Party II as Junior Trainee Production Assistant in the year 1982. He is working as Assistant Production Manager on promotion since the year 1996. He supported that the Party I after promotion as Production Supervisor was doing work of requisitioning raw material from store, of arranging man-power whenever it was required and of making payment of overtime wages. In addition, the Party I being Production Supervisor was competent to recommend leave of employees and to issue exit pass to workman.

16. From the above evidence led by both parties it reveals that the Party I is claiming to be workmen even after his promotion to the post of Supervisory Grade while the Party II is claiming that the Party I since after his promotion to the post of Supervisory Grade is not the workman. Initially, service of the Party I since after his appointment as Junior Production Assistant was governed by service rules applicable to workmen of the Party II. Rule 1-lays down that

*"these service rules shall apply to all workmen employed in the establishment to do manual, technical and supervisory work."*

17. Certified Standing Orders applicable to the workmen of the Party II and which are approved by Assistant Labour Commissioner and Certifying Officer, Panaji, Goa on 3-4-1984 are produced at Exb. W-5. Clause 1 of the Certified Standing Orders runs like this—

*"these orders shall apply to all workmen employed in the establishment to do manual, clerical, technical and supervisory work."*

18. Since the Party I is claiming to be a workman it is worthwhile to have provisions contained in Section 2(s) of the said Act, 1947 which defines a workman as follows:

*"workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—*

- (i) *who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957);*
- (ii) *who is employed in the police service or as an officer or other employee of a prison; or*
- (iii) *who is employed mainly in a managerial or administrative capacity; or*
- (iv) *who, being employed in a supervisory capacity draws wages exceeding one thousand per mensem or exercises either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of managerial nature."*

19. By Amending Act 46 of 1982 which came into force w.e.f. 21-8-1984 as stated by the Hon'ble Supreme Court in case of *HR Adyanthaya Etc. Etc. reported in 1994 II CLR 552* the persons who are employed to do operational work are also brought within the hold of definition of workmen under Section 2(s) of the said Act, 1947.

20. It is not in dispute that the Party I before his promotion to the post of supervisory grade was workman as defined under Section 2(s) of the said Act, 1947. His service came to be terminated when he was working on the post of Supervisor. Under this circumstance, question arises as to whether his duties which he was doing as workman or those which he was doing as Supervisor should be considered for determination of the Party I as a workman. In this context, it will be useful to have a reference of decision given by the Hon'ble High Court Bombay in case of *Premier Automobiles Limited v/s Premier Automobile Employees Union reported in 1988 (57) FLR 649*, and



which is placed before me by the learned advocate of the Party II. In this reported case, the second respondent was occupying post of Supervisor and from this post he had tendered his resignation. In a dispute relating to his resignation the Hon'ble High Court held that since this respondent was occupying post in a supervisory capacity and his salary was above the prescribed limit, he was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. Relying upon this decision, I hold that, the duties which the Party I was doing as Supervisor will have to be taken in to consideration for determination as to whether he is the workman.

21. Representative of the Party I argued that, Certified Standing Orders (Exb. W-5) are made applicable by the Party II to its workman doing manual, clerical, technical and supervisory work. Therefore, according to him, even for the sake of argument, assuming that the Party I was the supervisor at the time of termination of service, the Party II is not entitled to claim that the Party II is not the workman as defined under Section 2(s) of the said Act, 1947. In support of his argument, he relied upon decisions given by the Hon'ble High Court of Madras in case of *Shaw Wallace Company Limited v/s Presiding Officer, Second Additional Labour Court, Madras v/s Shri A. T. Jeyadoss*, reported in 2002 (1) L.L.N. 317 and by the Hon'ble High Court of Calcutta in case of *Monoranjan Chakraborty and State of West Bengal reported in 2002 L.L.N. 579*. In case of *Shaw Wallace and Company Ltd.*, charges sheets were issued against second respondent/employee for various misconduct, inter-alia, of assaulting co-employee being in a drunken state while on duty and for absence from factory for long hours. Disciplinary proceedings were initiated against him considering him to be a workman under Section 2(s) of the Industrial Disputes Act, 1947. He was dismissed after inquiry. It was contention of the management in a reference before Labour Court that the second respondent was supervisor and not workman. The Labour Court held that the second respondent was workman and modified the punishment of dismissal into one of reduction in wages for a period of one year and directed reinstatement. The management took up the matter before the Hon'ble High Court on writ petition. The Hon'ble High Court held that:

*"If the management takes disciplinary actions for alleged misconduct enumerated under the Certified Standing Orders treating the delinquent employee as a workman, subsequently the management is estopped from taking a stand before Labour Court that he is not a workman."*

22. In case of *Manoranjan Chakraborty* the petitioner/workman was a supervisor in the services of the third respondent. His service was terminated after he was found guilty of misconduct in departmental inquiry. There was a reference before the Industrial Tribunal. It was held by the Industrial Tribunal that the reference was not maintainable as petitioner was not a workman under the said Act, 1947. The petitioner challenged the Award. There was no evidence to show that the petitioner was controlling the work of the subordinates.

The domestic inquiry which was held against him was under the standing orders of the company. The Hon'ble High Court of Calcutta held that:

*"The company was stopped from taking a stand that petitioner was not a workman after having held a domestic inquiry against him under the standing orders of the company and that the petitioner is a workman within the meaning of the Act."*

23. In the present case there is no evidence to show and it is also not a case of any of the parties that action was taken at any time against the Party I under Certified Standing Orders of the Party II after his promotion to the post of Supervisory Grade. There was settlement between the Party II and its workman on 16-4-1991. Memorandum of the settlement is produced at Exb. W-6. Name of the Party I is figured at serial number 12 as one of the representatives of the workman. He admitted in his cross examination that since after his promotion to the post of Supervisory Grade he is not covered by any settlement. He was one of the members of the All Goa General Employees Union. He ceased to be member of the said union since after his promotion to the post of Supervisory Grade. All these facts which are material are clearly different from those of the reported cases of *Shaw Wallace and Company Limited* and of *Manoranjan Chakraborty* alluded supra. With respect, I am of the opinion that the decisions relied upon by the representative of the Party I from these two reported cases are not applicable to the present case.

24. The representative of the Party I further argued that if the duties which are enumerated by the Party I in evidence are taken into consideration, it clearly emerges therefrom that the Party I was doing duties of operational and technical nature, when the Party I was working as Junior Production Assistant and even after promotion of the Party I to the post of Supervisory Grade. Only because the Party I is given promotion to the post of Supervisory Grade that will not exclude the Party I from definition of the 'Workman' provided under Section 2(s) of the said Act, 1947. To substantiate his argument, he relied upon various decisions which are necessary to be referred.

25. The Hon'ble Supreme Court held in case of *Arkal Govind Raj Rao v/s Ciba Geigy of India Ltd., Bombay* decided on 6-5-1985 (Civil Appeal No. 2638/1980) that:

*"when an employee has multifarious duties and a question is raised whether he is a workman or not the Court must find out what are the primary and basic duties of the persons concerned and if he is incidentally asked to do some other work, may not necessarily be in tune with the basic duties, these additional duties cannot change character and status of the person concerned. In other words the dominant purpose of the employment must be first taken into consideration and the gloss of some additional duties must be rejected while determining the status and character of the person."*

26. In the above reported case the appellant joined service of the company as Stenographer-cum-Accountant

w.e.f. 18-1-1956. He was appointed as Assistant and continued to render service in that post till his services came to be terminated on 10-10-1972. The appellant raised a dispute before Deputy Commissioner, Bombay, who in turn, made reference to the Labour Court Bombay. One of the objections raised by the employer company was that the appellant is not a workman within the meaning of the expression in the said Act, 1947. The Labour Court held that even though the appellant was doing some clerical work he was also doing supervisory and administrative work and other work of checking bank reconciliation etc., which was not the clerical work and therefore he was not workman. The appellant filed Writ Petition in the Hon'ble High Court, Bombay. The Writ Petition came to be dismissed in lime line. The appellant took up the matter before the Hon'ble Supreme Court on appeal by special leave. The Hon'ble Supreme Court quashed and set aside award passed by the Labour Court and judgment of the Hon'ble High Court.

27. In case of *Ved Prakash Gupta v/s M/s. Delton Cable India (P) Limited* decided by the Hon'ble Supreme Court on 8-3-1974 (Civil Appeal No. 1673/1982) substantial duty of the appellant was only that of a security inspector at the gate of the factory premises and that it was neither managerial nor supervisory in the sense in which those terms are understood in industrial law. The Hon'ble Supreme Court held that the appellant clearly falls within the definition of a 'workman' in Section 2(s) of the said Act, 1947.

28. The Hon'ble Supreme Court held in case of *H. R. Adyanthaya etc. etc., appellants v/s Sandoz (India) Limited etc. etc., respondents*, reported in 1994 II CLR 552 that:

*"a person to be a workman under the Act must be employed to do the work of any of the categories viz. manual, unskilled, skilled, technical, operational, clerical or supervisory and it is not enough that he is not covered by either of the four exceptions to the definition."*

In the above reported case the employees were medical representatives as commonly known. The Hon'ble Supreme Court held that the Medical representatives are not workman within the definition of the Section 2(s) of the Act.

29. In case of *S. A. Sarang Petitioner v/s W. G. Forge and Allied Industries Limited Thane and others, respondents*, reported in 1995 I CLR 837, evidence on record was equivocal and was not clinchingly indicating nature of work done by petitioner. All documents produced by first respondents did not definitely show that the petitioner was employed as a supervisor. The oral evidence was equally ambiguous. The employer himself treated the employee as a person covered by Model Standing Orders which are undisputedly applicable to workmen. With this background of the facts the Hon'ble High Court pleased to hold that the petitioner is a workman under Section 2(s) of the Industrial Disputes Act, 1947.

30. In case of *C. Gopinath Pillai Petitioner v/s Thermax Limited and others, respondents*, reported in 2005 I CLR 345, the petitioner was doing operational work, organizing seminars, performing work of an assessor and of co-ordinator falling within the parameters of operational work. The Hon'ble High Court held that the petitioner is a workman.

The Hon'ble High Court of Bombay in the above reported case reproduced from the 1996 Edition of the Chambers Dictionary, meaning of the words 'Operational' and 'Operation' as follows:-

*"Operational means relating to operation, ready for action, operation means the act or process of operating, something which is done or carried out, agency, influence, a method of working an action or series of movements, a surgical procedure, especially in military or surgical sense."*

31. The Hon'ble High Court of Bombay held in case of *George Thomas Thakkeyil, petitioner v/s Sci-Tech Centre, respondents*, reported in 2007 II CLR 185 that—

*"if an employer continuously and consistently proposes and takes action against its employee on the footing that he is covered by the Model Standing Orders (thereby implying that the employee is a "workman" within the meaning of the Act), then such employer must be estopped from denying the said fact when a dispute regarding the dismissal of the employee finally lands up before an industrial adjudicator."*

32. The Hon'ble Supreme Court in case of *National Engineering Industries v/s Shri Kishan Bhagaria and others*, reported in 1988 I CLR 290 has referred to definition of supervisor in Black's Law Dictionary Special Deluxe Vth edition. This definition is reproduced by the Hon'ble High Court of Bombay in case of *Cricket Club of India and others, petitioner v/s Balajit Sham (M/s.) and another, respondents*, reported in 1998 I CLR 570. The definition is as follows:

*"in a broad sense one having authority over others, to superintend and direct. The term supervisory means any individual having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees or responsibility to direct them or to adjust their grievances, or effectively to recommend such action if, in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."*

33. In the above reported case the respondent No. 1 joined service of the petitioner as a house keeper. Later on she was confirmed in the service. She was supervising functions of persons working in the club. She was recommending leave applications. She had no powers to take decision. Letter of appointment stated that she would be governed by model standing orders. No material was produced to show that she was doing work mainly of supervisory nature and that she could

bind the company by taking decision on behalf of the company. Considering all these circumstances the Industrial Court held that the respondent No. 1 was workman. This decision is up held by the Hon'ble High Court, Bombay.

34. Learned advocate of the Party II in reply argued that the Party I was governed by Service Rules and by Certified Standing Orders of the Party II when the Party I was working as Trainee Junior Production Assistant. Since after the Party I came to be promoted to the Supervisory Grade w.e.f. 1-6-1991, the Party I is not governed either by the Service rules or by the Certified Standing Orders. The Party I who was initially member of the Union, after the promotion to the post of Supervisory Grade ceased to be member of the Union. The Party I since after promotion to the post of Supervisory Grade is not covered by any settlement between the Party II and its workmen. As a Supervisor the Party I was requisitioning raw material required for production, was in-charge of shifts, was monitoring process and was controlling quality of products, was writing shift reports, was forwarding applications for overtime wages to higher authority, was recommending leave, was signing exit pass, was requisitioning vehicle and was in-charge of factory especially during second and third shifts. All these kinds of duties which were being done by the Party II will certainly lead to conclusion that the Party I was the Supervisor. He further pointed out that the Party I was appointed to the supervisory post that the Party I was getting salary Rs. 3,289/- per month at the time of termination of service, which is more than Rs. 1,600/- per month prescribed under Section 2(s)(iv) of the said Act, 1947. Such supervisor is excluded from definition of workman under Section 2(s)(iv) of the said Act, 1947. Therefore, in his opinion, the Party I cannot be said to be a workman. He also relied upon various decisions from reported cases which I am going to refer.

35. The Hon'ble High Court of Bombay in case of *Vinayak Baburao Shinde, Petitioner v/s S. R. Shinde, Member Industrial Court, Thane and two others, respondents, reported in 1985 I CLR 318* explained meaning of "supervise" as follows:

*"the word supervise means to oversee, that is to look after the work done by the persons. The word "supervision" occurring in Section 2(s) of the Industrial Disputes Act, means supervision in relation to work or in relation to persons. The essence of supervision consists in overseeing by one person over the work of others. This also involves a power in the person overseeing to direct and control the work done by the persons over whom he is supervising. In an industrial establishment normally there are three layers of work. One is the clerical or the manual work which is done by the workman, the second is the supervisory work done by a supervisor, and at a higher level is the work of a Manager."*

36. In the reported case referred to above petitioner was supervisor. He was drawing wages exceeding

Rs. 1,000/- per month. The Hon'ble High Court Bombay held that the petitioner is not a workman within the meaning of Section 2(s) of the Industrial Disputes Act.

37. The Hon'ble High Court of Bombay held in case of *John Joseph Khokar petitioner v/s B. S. Bhadange and others, respondents, reported in 1998 (2) Bom. C. R. 174* that—

*"question whether a worker was working in supervisory capacity or working as a workman would depend on facts of each case. Mere designation or incidental work done by him would not be deciding factor. If employee's principal job is to oversee work of juniors and has some sort of independent discretion and judgement, he can be termed as Supervisor."*

38. In the reported case referred to above the employee/petitioner was overseeing work of 29-30 workmen. He was distributing work to them. He was giving instructions and demonstration etc., when necessary. He was following up all jobs under his charge and was ensuring that the work progresses satisfactorily. He was also ensuring that the correct tools and material are available to the workmen under him as required and that the work is being carried out by them correctly according to his instructions. In view of this matter, the Hon'ble High Court held that the finding recorded by the industrial court that the petitioner is not workman cannot be faulted.

The Hon'ble High Court of Bombay held in case of *Shrikant Vishnu Palwankar v/s Presiding Officer, I Labour Court and another, reported in 1992 II LLJ 378* that, recommendation of leave is one index of supervisory function.

39. The Hon'ble High Court of Bombay in case of *Union Carbide (India) Ltd., and D. Samuel and others, reported in 1998 (80) FLR 684* laid down tests to determine as to whether employee is a supervisor or a workman. These tests are as follows:

- (a) *Whether the employee can examine the quality of work and whether such work is performed in satisfactory manner or not;*
- (b) *Does the employee have powers of assigning duties and distribution of work;*
- (c) *Can he indent material and distribute the same amongst the workmen;*
- (d) *Even though he has no authority to grant leave, does he have power to recommend leave;*
- (e) *Are there persons working under him;*
- (f) *Has the power to supervise the work of men and nor merely machines;*
- (g) *Does he mark the attendance of other employees;*
- (h) *Does he write the confidential reports of his subordinates.*

40. The Hon'ble Supreme Court held in case of *Burmah Shell Oil Storage and Distributing Company of India Ltd.,*

*v/s The Burmah Shell Management Staff Association and others, reported in 1971 SC 922* that in determining nature of employment of an employee and in holding that the employer is employed to do supervisory work, took into consideration not only the work of supervision which he was carrying on in ensuring that the skilled and unskilled manual workmen employed under him were properly doing work of repairs, maintenance, servicing and fabricating etc., but also the fact that the workmen functioned under his control and directions that he allocated and re-allocated work to them and that he initiated disciplinary proceedings etc. The Hon'ble Supreme Court further held that the exercise of such powers is clearly a part of his supervisory duty.

41. The Hon'ble High Court of Bombay at Goa in Writ Petition number 167/1999 which was between *Vishnu P. Kamat v/s Presiding Officer, Industrial Tribunal, Panaji, Goa and one another*, decided on 2-7-1999 and of which xerox copy is placed before me by learned advocate of the Party II, held that the petitioner was interested with duties of sanctioning of leave of operators, checking of production, stoppage of machinery if the product was found not up to the mark etc., and that these duties are certainly of supervisory nature.

42. The position that emerges from the above said discussion is that in determining the question whether a person employed by the employer is workmen under Section 2(s) of the said Act, 1947 or not, the Industrial Tribunal has principally to see main or substantial work for which the employee had been employed and engaged to do. Neither the designation of the employee is decisive nor any incidental work that may be done or required to be done by such employee shall get him outside the purview of workman if the principal job and the nature of employment of such employee is manual, technical or clerical. Each case would depend on nature of the duties predominantly or primarily performed by such employee and whether such function was supervisory or not would have to be decided on the facts keeping in mind correct principles led down by the various authorities referred to above.

43. Admittedly, when the Party I was appointed as Junior Production Assistant in establishment of the Party II his service was governed by Service Rules and thereafter by Certified Standing Orders of the Party II and which are approved by competent authority on 3-4-1984. He was member of the Union. There was settlement between the Party II and its workmen on 16-4-1991. Memorandum of settlement is at Exb. W-6. Name of the Party I is at Sr. No. 12 as one of the representatives of the workmen. It follows that he was one of the parties to the settlement dated 16-4-1991 (Exb. W-6). The Party I after he came to be promoted to the post of Supervisory Grade w.e.f. 1-6-1991 ceased to be a member of the Union. He is not covered by any of the settlements arrived at between the Party II and its workmen as pointed out by learned advocate of the Party II. These admitted facts lead to logical conclusion that the Party I since after his promotion to the post of Supervisory Grade is excluded from the category of workmen.

44. Letter dated 4-4-1991 produced at Exb. W-4 where- under the Party II promoted the Party I to the post of Supervisory Grade I w.e.f. 1-6-1991 does not specify main or substantial work which the Party I was required to do after his promotion. His evidence shows that even after promotion to the post of Supervisory Grade he was doing technical as well as operational duties in the process of manufacturing of products in Vitamin 'E' plant and then in Guaizulune Plant of the Party II. During process of manufacturing product he was, as per instruction of production, Executive requisitioning raw material from store and which was required for the production, he was monitoring the entire production process, he was taking sample of the products from time to time, he was doing work of quality control of the products, he was sending sample to the quality control department for analysis, and he was writing daily shift reports including progress in the production, power failure, if any and of break down of machinery, if any. In his cross examination, he admitted that after his promotion to the post of Supervisory Grade his code number is changed, he was given responsibility of shift in-charge, that he forwarded applications for overtime wages, given by workmen Gaunekar, Dhaimodkar and Shriguru, and leave applications given by Niranjana Kurdekar, Kushendra Naik, Nilesh Usgaonkar and Vinut Kumar Rane, that he signed exit pass dated 9-12-1991, that he had requisitioned a car under requisition slip dated 15-1-1992 for official work, that he was appointed as shift in-charge during periods from 4-5-1992 to 9-5-1992 and from 14-6-1992 to 20-6-1992, that he was appointed as in-charge under letter (Exb. E-11 colly) for entire factory, and that he was appointed as shift in-charge as per shift programmes for a particular department (Exb. E-6 colly).

45. Evidence of the witness V. Y. Rane examined by the Party II further makes it clear that the Party I was working in stage four in which only the supervisors were working in Guaizulune plant of the Party II. The supervisors were supervising over work done by him and by other workmen. Only the supervisors are the shift in-charge and not persons working as workmen. The Party I who was working in second and third shift was responsible to find out whether the Operators, Production Assistant and Helpers were discharging their duties properly or not.

46. It clearly emerges from combined reading of evidence of the Party I and of his witness V. Y. Rane that the Party I after his promotion to the post of Supervisory Grade—

- (a) ceased to be a member of the Union;
- (b) was not covered by any settlement arrived at between Party II and its workmen;
- (c) was monitoring entire process of the product in Vitamin 'E' plant and thereafter in Guaizulune Plant of the Party II;
- (d) was examining quality of the products;

- (e) was taking sample of the products and was forwarding the same to the concern department for analysis;
- (f) was requisitioning raw material from store of the Party II and which was required for the production;
- (g) though he had no authority to grant the leave he was forwarding to higher authority leave applications given by the workmen;
- (h) he was requisitioning vehicle for office work;
- (i) he was signing exit pass, and that;
- (j) he was incharge of the entire factory during the second and third shifts.

47. I am aware that the exit pass issued and requisition of vehicle by the Party I was only once. Such stray instances, as pointed out by representative of the Party I, will not be sufficient to hold that Party I as Supervisor. However, if the cumulative effect of all the duties done by the Party I and which are extracted above are taken into consideration along with the letter of his promotion to the post of Supervisory Grade and also tests which are laid down by various authorities cited above to determine as to whether the employee is a supervisor or workman, in my view there is no alternative but to draw irresistible conclusion that the Party I was the Supervisor and that he was discharging duties of the Supervisor in the establishment of the Party II. He was getting wages more than Rs. 1,600/- per mensem. He comes under clause (iv) which is under Section 2(s) of the said Act, 1947 and which excludes and employee from definition of the workman. Evidence led by Party II and argument advanced by its learned advocate appears to be more probable and convincing.

48. Representative of the Party II by placing reliance on Certified Standing Orders of the Party II, submitted that the Certified Standing Orders are made applicable to all workmen doing manual, clerical, technical and supervisory work. Therefore, according to him, even if it is proved that the Party I was doing supervisory work, the Party I will have to be treated as workman.

49. It is true that Certified Standing Orders are made applicable by the Party II to its employees doing manual, clerical, technical and supervisory work. There is a provision in the shape of clause (iv) under Section 2(s) of the said Act, 1947 which excludes the person who is employed in supervisory capacity and who is drawing wages exceeding one thousand six hundred rupees per mensem. When there is such specific provision in the Act itself, anything which is contrary cannot be accepted. I, therefore, do not agree with case made out by the Party I and also with elaborate exercise made by his representative. My answer to the issue is in negative.

50. The Party I is not proved to be a workman within the meaning of Section 2(s) of the said Act, 1947. Dispute as to whether action of the Party II in

terminating service of the Party I is legal and justified, does not survive. The Party I is not entitled to any of the reliefs under the Industrial Disputes Act. With this I proceed to adjudicate the reference by passing order as follows:-

#### ORDER

1. Shri Naguesh Priolkar/Party I, Supervisor, Grade I of the management of M/s. E-Merck (India) Ltd., Usgao, Ponda, Goa, is not a workman under Section 2(s) of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).
2. Dispute as to whether action of the Management of M/s. E-Merck (India) Ltd., Usgao, Ponda in terminating the services of Shri Naguesh Priolkar, Production Supervisor, w.e.f. 8-7-1992, does not survive.
3. The Party I Shri Naguesh Priolkar, Production Supervisor, is not entitled to any of the reliefs claimed by him.
4. No order as to costs.
5. Award be submitted to the Government of Goa as per provisions contained in Section 15 of the Industrial Disputes Act, 1947.

Sd/-  
(Dilip K. Gaikwad),  
Presiding Officer,  
Industrial Tribunal-cum-  
-Labour Court-I.

#### Notification

No. 28/18/2007-LAB/928

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa, on 17-8-2007 in reference No. IT/5/2003 is hereby published as required by Section 17 of the Industrial Tribunal Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).

Porvorim, 8th October, 2007.

IN THE INDUSTRIAL TRIBUNAL CUM-LABOUR COURT-I  
AT PANAJI

(Before Dilip K. Gaikwad, Presiding Officer)

Case No. IT/5/2003

Ranson Ivo Fernandes,  
Pontemoll, H. No. 543,  
Curchorem-Goa.

... Workman/Party I

V/s  
M/s. Metasal Speciality  
Chemicals Pvt. Ltd.,  
Near Oceanic Paints,  
Sancoale, Zuarinagar, Goa.

... Employer/Party II

Party - I in person.

Party - II is represented by K. V. Nadkarny (Representative).

#### AWARD

(Passed on this 17th day of August, 2007)

This is a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 (hereinafter in short referred to as the said Act, 1947).

1. Facts of present reference, stated in brief, are as follows:

The Government of Goa in exercise of powers conferred on it by Section 10(1)(d) of the said Act, 1947, under order dated 27-1-2003 has referred to this Industrial Tribunal following dispute for adjudication:

- I. Whether Shri Ranson Ivo Fernandes, comes within the purview of definition of "workman" under clause (s) of Sec. 2 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947)?
- II. If reply to above is in affirmative, whether the action of the management in terminating the services of Shri Ranson Ivo Fernandes w.e.f. 18-1-2002 is legal and justified ?
- III. If the action of the management is not legal and justified, what relief the workman is entitled to ?

2. In response to notices, both parties put their appearance. The Party I presented his claim statement on 14-7-2003 at Exb. 6. It appears from the claim statement that one Jagadeep Chowgule is the Managing Director of Party II which is situated at Sancoale, Zuarinagar, Goa. Party I was employed as Shift-in-charge on monthly salary of Rs. 2,400/- in the establishment of the Party II. He was required to do the work of on-line testing on chemicals and products, of writing registers of preparing day to day reports of each shift and of helping helpers and labourers in handling chemicals during production process. He had taken initiative to form union of employees working in establishment of the Party II, as a result, the Party II adopted unfair labour practice and started to victimize and to harass him. The Party II terminated his service w.e.f. 18-1-2002 by way of victimization and with intention to take revenge against him. The termination of his service is illegal and bad in law. He raised a dispute before the Assistant Labour Commissioner, Vasco. Conciliation proceeding held by the Asstt. Labour Commissioner ended in failure. Therefore, the Government of Goa has referred the dispute to this Industrial Tribunal for adjudication as stated earlier.

3. The Party I by presenting the claim statement has prayed for holding that the termination of his service is illegal, unjustified and bad in law, and for reinstatement in service with full back wages and with continuity in service.

4. The Party II filed its written statement on 21-8-2003 at Exb. 7. It appears from written statement that the Party I is not a workman as defined under Sec. 2(s) of the said Act, 1947, and therefore, the reference is not maintainable. The Party I was appointed as trainee shift in-charge in establishment of the Party II for a period of three months w.e.f. 6-12-99. As shift in-charge, it was the duty of the Party I to supervise working of the machines to take decisions in failure of power during course of production, to monitor production, to check quality, to ensure that the production is not stopped/delayed, to prepare record of jobs and products and to do such other supervisory duties as deemed necessary for smooth working of the machines. There was no demand for product manufactured by the Party II, as a result, the Party II was facing from acute financial difficulties. It decided to abolish post of shift in-charge which resulted into termination of service of the Party I with immediate effect. Even though the Party I was not a workman as defined under Sec. 2(s) of the said Act, 1947, the Party II by way of abundant precaution has paid Rs. 10,670/- including notice wages, retrenchment compensation, salary for the months of December, 2001 and January, 2002 and encashment of balance leave. Action taken by the Party II in terminating the service of the Party I is bonafide, legal and justified. The Party I is not entitled to any of the reliefs claimed in the claim statement.

5. The Party II submitted its Rejoinder on 27-10-2003 at Exb. 8. He asserted that, though he was employed as shift-in-charge, he was required to perform work of workman. He was the workman covered by Sec. 2(s) of the said Act, 1947. He denied all the contentions which are raised by the Party II in its written statement and which are adverse to his interest. It is needless to reiterate the denials.

6. On basis of pleadings, the then learned Presiding Officer framed issues at Exb. 9. The issues are as follows:

1. Whether the Party I proves that he is a "workman" within the meaning of Sec. 2(s) of the Industrial Disputes Act, 1947 ?
2. Whether the Party I proves that the termination of his service by the Party II is by way of victimization of his legitimate trade union activities ?
3. Whether the Party I proves that the action of the Party II in terminating his services w.e.f. 18-1-2002 is illegal and unjustified ?
4. Whether the Party I is entitled to any relief ?
5. What Award ?

7. My findings on the above issues are as follows:-

1. In the negative.
2. In the negative.
3. In the negative.

4. In the negative.
5. As per final order.

#### REASONS

8. *Issue Nos. 1 to 4:-* For the sake of convenience and to avoid repetition, I am deciding these issues together. The Party I in support of his claim filed his own affidavit in evidence at Exb. 12. The affidavit shows that he was employed as shift in-charge on monthly salary of Rs. 2,400/- in establishment of the Party II. Even though he was employed as a shift in-charge, he was actually doing work of "workman". He was doing work of testing chemical products as per instructions given to him by shift supervisor. He was writing register and day to day production report. He was working with helpers and labourers. He was doing work of handling chemicals in production process as per instructions of supervisors. He was actually doing work with aid of tools, equipments and instruments in production process. He was governed by Certified Standing Orders. He was reporting all matters and incidents to Shift Supervisor. Whenever there were defects or faults on production line, the same were being rectified by him and by the Manager.

9. Further, it appears from the affidavit-in-evidence (Exb.12) that the Party I formed an union of employees working in establishment of the Party II. He was one of office bearers of the Union. Therefore, the Party II started to harass and victimize the workman including the Party I. By letter dated 15-1-2002, the Party II terminated his services w.e.f. 18-1-2002. The termination of his service is with intention to take revenge against him for taking lead in formation of the trade union in establishment of the Party II. The termination is illegal and unjustified. He is entitled to reinstatement in service with full back wages and with continuity in service.

10. Examination-in-chief of the Party I and which is partly recorded is at Exb. 13. Documents which he wanted to produce were not with him, and therefore, as per his request, his further examination-in-chief came to be adjourned on 28-10-2004. Thereafter, he did not appear before this Industrial Tribunal. A notice dated 21-8-2007 was sent to him by R. P. A. D. Whereunder he was informed to appear before this Industrial Tribunal on 4-9-2007. He is served with the notice. Copy of the notice is at Exb. 14, while postal acknowledge is at Exb. 15. Even then, he did not remain present to lead further evidence on his behalf. Representative of the Party II filed pursis at Exb. 17 stating that the Party II does not wish to lead evidence. The pursis is dated 10-9-2007.

11. Burden to prove issue Nos. 1 to 3 is placed on the Party I. The Hon'ble High Court of Bombay (Panaji Bench) held in case between *V. N. S. Engineering and Services Company and Industrial Tribunal Goa, Daman and Diu and another*, reported in 1987, II LLN, 968 that, burden is on the employee who caused reference to

prove that his termination was illegal. The Hon'ble High Court of Allahabad held in case of *V. K. Raj Industries, Aligarh, petitioner v/s the Labour Court-I U. P. at Kanpur and others respondents*, reported in 1982 LAB I. C. 551 that, workman challenging the validity of termination of his service should produce evidence to prove its illegality.

12. Decision from the above two reported cases are placed before me by representative of the Party II to make position clear that burden to prove issues No. 1 to 3 lies on the Party I. Although the Evidence Act is not strictly applicable to proceedings before the Industrial Courts, principles underlying it are certainly applicable to such proceedings. He who approaches the Court should prove his own case. Therefore, and relying upon decisions from the reported cases, alluded Supra, I am in full agreement with submission made by Representative of the Party II that the burden to prove issues No. 1 to 3 is exclusively on the Party I.

13. Sec. 2(s) of the said Act, 1947, defines workman as follows:

*"Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has laid to that dispute."*

Clause (iv) of Sec. 2(s) excludes from definition of 'workman' any such person who is employed in a supervisory capacity and who is drawing wages exceeding one thousand six hundred rupees per mensem or is exercising either by the nature of the duties attached to the office or by reason of the powers vested in him functions mainly of a managerial nature. Xerox copy of appointment letter of the Party I as Shift in-charge is produced at Exb. W-1. As Shift-in-charge, it was the duty of the Party I to work in all the three shifts looking after the operation of the Plant, to do work of skilled technical and of operational nature, to guideline helpers and to train them in handling all the equipments under normal conditions and under emergencies, to educate them on importance of various chemicals used in the Plant, to report to supervisor or officer or managing director. Thus, if the appointment of the Party I as Shift in-charge coupled with his duties specified in his appointment letter is taken into consideration, it becomes apparent that he was employed in a supervisory capacity in establishment of the Party II. His initial salary was Rs. 2,000/- for the month of December, 1999, and then Rs. 2,500/- till the completion of probationary period of six months i.e. from January, 2000 to June, 2000. Thereafter, he was entitled to increment @ Rs. 500/- p.m. It follows that the

Party I who was employed in a supervisory capacity, was drawing wages exceeding one thousand six hundred rupees per month. He is covered by clause (iv) of Sec. 2(s) of the said Act, 1947. It was his duty to prove that he is the workman and that he is not covered by any of the exceptions given under Sec. 2(s) of the said Act, 1947.

14. The Party II has terminated service of the Party I w.e.f. 18-1-2002. The Party I has received a cheque of Rs. 10,670/- alongwith letter of termination of his service, towards payment of legal dues. This fact is admitted by him in para No. 6 of his claim statement. The Party II has explained in para No. 13 of its written statement that this payment of Rs. 10,670/- is on account of notice wages, compensation, salary of December, 2001 and January, 2002 and of encashment of balance leave. Such payment leads to logical conclusion that Party II by way of abundant precaution has complied with provisions contained in Sec. 25-F of the said Act, 1947. It is not the case of the Party I that the Party II did not comply with the said provision, and, therefore, termination of his service is illegal and unjustified.

15. The Party I has challenged termination of his service mainly on the ground that the termination is by way of victimization for his legitimate trade union activities. Though there is evidence of the Party I in the form of affidavit, in support of this, it should be remembered that the Party I did not submit himself for cross examination. In other words, the evidence led by the Party I in the form of affidavit could not be tested by way of cross examination due to his absence. Adverse inference will have to be drawn against him. Such type of evidence which could not be tested by way of cross examination cannot be accepted and

relied upon. In view of this reason and the above discussion, I hold that the Party I failed to discharge burden of proving the issues No. 1 to 3. Once he fails to prove these three issues, the resulting position is that, he is not entitled to any of the reliefs claimed by him. I, therefore, answer the issues in the negative.

As a result of findings given to issue Nos. 1, 3 and 4, I proceed to adjudicate the dispute by passing order as follows:-

ORDER

1. It is hereby adjudicated that Shri Ranson Ivo Fernandes does not come within the purview of definition of "workman" under clause (s) of Section 2 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).
2. It is hereby adjudicated that the action of the management in terminating the services of Ranson Ivo Fernandes w.e.f. 18-1-2002 is legal and justified.
3. It is hereby adjudicated that the workman is not entitled to any of the reliefs.
4. No order as to costs.
5. The Award be submitted to the Government of Goa as per provision contained in Sec. 15 of the Industrial Disputes Act, 1947.

Sd/-  
(Dilip K. Gaikwad),  
Presiding Officer,  
Industrial Tribunal-cum-  
-Labour Court-I.